

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Marble Falls and Dripping Springs, Texas)¹

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MB Docket No. 03-195
RM-10745

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FCC MAIL SECTION

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 21, 2003

Released: November 26, 2003

By the Assistant Chief, Audio Division:

1. In response to a Petition for Rule Making filed by Amigo Radio, Ltd. ("Amigo"), the Commission has before it for consideration the *Notice of Proposed Rule Making*,² requesting the substitution of Channel 285A for Channel 285C2 at Marble Falls, Texas, and reallocation of Channel 285A from Marble Falls, Texas, to Dripping Springs, Texas. Amigo also requests modification of the license for Station KXXS to specify Dripping Springs as the community of license. Amigo filed comments in which it restated its intention to file an application for Channel 285A at Dripping Springs. No other comments were received in response to the *Notice* in this proceeding.

2. Based upon the information presented in this proceeding, the public interest would be served by substituting Channel 285A for Channel 285C2 at Marble Falls and reallocating Channel 285A to Dripping Springs, Texas, since it would result in a preferential arrangement of allotments pursuant to the Commission's Change of Community procedures.³ As stated in the *Notice*, information was provided demonstrating community status for Dripping Springs. Dripping Springs would receive its first local service fulfilling allotment priority (3) of the Commission's allotment priorities.⁴ This action will not deprive Marble Falls of local service as non-commercial Station

¹ On August 4, 2003, a CFR correction was published in the *Federal Register* correcting the FM Table of Allotments under Texas listing the community of Marble Falls and Channel 285C2. See 68 FR 45786, August, 4, 2003.

² *Marble Falls and Dripping Springs, Texas*, 18 FCC Rcd 18487 (M.B. 2003).

³ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

⁴ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time service; (3) First local service;

KBMD, Channel 203A, will continue to provide service to the community. Retention of Channel 285C2 in Marble Falls would be considered under priority (4), other public interest matters.

3. The reallocation proposal is consistent with the requirements set forth in *Change of Community*, *supra*. As explained in the *Notice*, Dripping Springs is not located within an urbanized area.⁵ Therefore information responsive to a *Tuck* analysis to determine whether Dripping Springs is sufficiently independent of an urbanized area to merit a first local service preference is not necessary.⁶ Channel 285A can be allotted to Dripping Springs, Texas, in compliance with the Commission's minimum distance separation requirements at Amigo's specified site.⁷ From this site, the gain area for Dripping Springs contains 107,518 people in an area of 459 square kilometers with a net loss of 226,000 people in an area of 6,049 square kilometers. Although there is a noticeable loss area, a staff engineering analysis confirms that the community of Marble Falls will continue to receive at least 16 aural services and that the entire loss area and population will receive five or more aural services. Further, 98 percent of the population within the loss area will receive ten or more aural services and no white or gray areas will be created with the channel reallocation which provides a first local service at Dripping Springs.⁸ Both the loss and gain areas are considered to be well served with aural services. In accordance with Section 1.420(i) of the Commission's Rules, we will modify the license for Station KXXS to specify operation on Channel 285A at Dripping Springs, Texas, as its new community of license.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 12, 2004, the FM Table of

and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 29 88 (1982).

⁵ See, *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

⁶ See *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951), *RKO General, Inc.*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck* ("Tuck"), 3 FCC Rcd 5374 (1988).

⁷ The coordinates for Channel 285A at Dripping Springs are 30-11-54 and 98-00-46. The site is located 7.5 kilometers (4.6 miles) east of the community. Although Mexican concurrence has been requested for the allotment of Channel 285A at Dripping Springs, notification has not been received. Therefore, operation with the facilities specified for Channel 285A at Dripping Springs is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico.

⁸ A white area, for purposes of FM allotments, is a geographical area that is not served by any full-time aural service and a gray area is one that is served by only one full-time aural service.

Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Dripping Springs, Texas	285A
Marble Falls, Texas	-----

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Amigo Radio, Ltd. for Station KXXS, Channel 285C2, Marble Falls, Texas, IS MODIFIED to specify operation on Channel 285A at Dripping Springs, Texas, subject to the following conditions:

(a) Within 90 days of the effective date of the *Order*, the licensee of Station KXXS shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing

6. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Amigo Radio, Ltd., licensee of Station KXXS, Channel 285C2, is required to submit a rule making fee in addition to the fee required for the application to effectuate the change in community of license and class change for Station KXXS, from Channel 285C2 to Channel 285A and reallocation of the channel from Marble Falls, Texas, to Dripping Springs, Texas.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau